IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURIDICTION

CRIMINAL APPEAL NO. 656 OF 1999

Tabaji Ramchandra Chougule,]
R/At: Vadgaon Anand, Inam Mala,]
Tal. Junnar, Distt: Pune.] .. Appellant / Ori. Accused

Versus

State of Maharashtra.] .. Respondent (Ori. Complainant)

Shri A.P. Apte for the appellant.

Shri M. Shringarpure, P.P. for the State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 8TH SEPTEMBER, 2004.

ORAL JUDGMENT : *[Per Anoop V. Mohta, J.]*

1. The appellant-accused had committed murder of his wife and, therefore, he was prosecuted and convicted under Section 302 of the Indian Penal Code. He has been sentenced to suffer imprisonment for life.

Therefore, the present Appeal against the order of conviction.

2. The learned Additional Sessions Judge, Pune, in Sessions Case No. 329/96 held that on 10th May 1996 at about 1.15 noon, at village Vadgaon-Anand, the appellant committed murder of his wife Lata by assaulting with an axe on her head. The basis was the 7 prosecution witnesses, including main eye witness (PW3) Janku. The other supporting witnesses Medical Officer, P.W.1 P.P. Joshi, who conducted the post mortem of the deceased on 11th May 1996 at 11.00 a.m. (Exhibit-16) proved the three main injuries that resulted into the death of the deceased Lata.

3. (PW2) Shashikant, the brother of the deceased, lodged a complaint (Exhibit-8) on 10th May 1996 at 9.15 p.m., after receiving the information from one (PW5) Chandrakant about the incident and after visiting the spot at about 7.00 p.m. His statement was recorded on 10th May 1996. He deposed about the strained relation of the appellant and the deceased Lata. He also deposed about the second marriage of the appellant with one Anita, who was residing in the house of the appellant.

The appellant' sillicit relationship with the said Anita had sparked frequent quarrels between the appellant and his deceased wife.

4. The main eye witness (PW3) Janku Ganpat Mengar had witnessed the incident on 10th May, 1996, deposed as under:

> *"The dispute was going on between the accused and the deceased while cutting the branches of the tree. I have not heard the details of the dispute, as they were at some distance from me. Deceased Lata fell on the ground by giving push by the accused. The accused gave three blows on the head of Lata with an axe. The accused thrown away the axe, and then ran away. The blood was oozing from the injuries of Lata and I have seen this fact after going near Lata. The father of the accused was present at the house which is situated at the land. I have narrated this incident to the father of the accused. Then the adjacent ladies gathered near the spot and took Lata inside the house.*
>
> *This incident might have occurred at about 1 to 1.30 p.m. Article no.2 is the same axe by which the accused gave the axe blows to Lata. Chandrakant Bhutambare was at some what long distance than me from the spot."*

5. This witness, also could not be shattered. On the contrary, he deposed in the cross-examination that the accused ran away after the incident. The Panchanama was prepared at about 5.00 p.m. He was arrested by the Police at the relevant time, but later on released also. He denied the suggestion that he had ever touched the person of the deceased. He was cross-examined (Exhibit-43) for the following alleged omissions in the Police statement.

> *"It is not correct to say that I have not stated to the Magistrate that accused pushed his wife, due to which she fell down. I cannot assign the reason for the omission of that statement in a statement now confronted to me. ..... It is not correct to say that I have not stated about the number of blows given by the accused before the Magistrate. I cannot assign reason for the omission."*

This deposition of Janku, supports the case of the prosecution substantially. Above omissions, if any, in no way affects the case of the prosecution.

6. In the facts and circumstances of the case, the conviction, based even on a solitary statement of (PW3) Janku cannot be discarded especially when there are no material contradictions and/or omissions and/or any perversity pointed out by the learned counsel appearing for the appellant-accused. The law is well settled that the sole eye witness and its credibility corroborated by other circumstantial evidence read with the corroborative medical evidence, are also sufficient to convict a person. The learned Sessions Judge, therefore, has committed no error, while passing the order of conviction based on the touchstone of the cardinal principle of appreciation of evidence.

7. [PW4] Vilas Shankar Shirtar was a Panch witness to the proved spot Panchanama [Exhibit-23] dated 11th May 1996. This evidence has also remained undisturbed.

8. [PW5] Chandrakant Trimbak Bhutambare, who was present near the spot on 10th May 1996, along with PW 3 Janku, has deposed that

he was at a distance of one furlong away from the accused and Janku. He saw immediately after the incident that blood was oozing from the head of lying Lata. He also denied in the cross-examination that he had not seen any incident and/or that he was deposing falsely. However, he admitted that he was kept in the Police Chowky for one day and one night, after the incident as the Police had suspected Chandrakant (PW5) and Janku (PW3) to have committed this offence. This witness also supports the case of the prosecution to the extent that the incident took place on 10th May 1996 where PW3, the accused and deceased Lata were present on the spot in question, at the relevant time. This witness also supports and corroborates the incident.

9. (PW6) Dadaoji Keroji Panchamukhi is a Panch witness who identified the clothes of the accused, with the blood stains on his trousers and sleeves.

10. (PW7) Bajirao Dadoba Mohite, PSI, Narayangaon Police Station recorded the complaint (Exhibit-20), as per the narration of the complainant (PW2) Shashikant, visited the spot and has further drawn the Inquest

Panchanama (Exhibit-13), on 11th May 1996, in the presence of the Panchas. He had recorded the statement of 6 witnesses, including PW3 and PW5. He deposed that they searched for the accused as he was absconding. He deposed further that the dead body was sent for Post Mortem on 11th May 1996 (Exhibit-16). This evidence could not be shattered in the cross-examination, except for a statement that Chandrakant (PW 5) never deposed that they were cutting the trees by the help of a saw. This also nowhere dis-links the chain of events as observed above. The Post Mortem Note (Exhibit-16) supported by the testimony of PW1, proves the cause of death of deceased Lata by multiple head injuries inflicted by an axe.

11. After considering the evidence led by the prosecution, as referred above, we see there is no reason to interfere with the finding given by the learned Sessions Judge, specifically when there is sufficient material, brought on the record by the prosecution to prove the charge, as framed against the appellant. As observed, the motive of the appellant-accused, was proved i.e. the illicit relations of the accused with one Anita, an alleged secret second marriage, and living with her in the matrimonial

home of deceased Lata. The appellant thereafter, as recorded, neglected the deceased and never maintained her and their children. This resulted into regular quarrels between the appellant and the deceased Lata. This illicit relation and their regular quarrels has been proved by the prosecution through (PW2) Shashikant, the brother of the deceased.

12. The accused was absconding after the incident. The accused, however, tried to put forth his case of alibi. However, appellant-accused has not placed anything to substantiate his plea of alibi. On the contrary, there was sufficient evidence to prove, through (PW3) Janku, that at the relevant time, the appellant was present on the spot, even before the incident in question. There was no such plea of alibi raised in the statement under Section 313 of the Criminal Procedure Code by the accused nor he has led any evidence to support his case. The plea of alibi was false. It is settled that the defence of alibi must be proved by the person who wants to take shelter of the same.

13. The accused further failed to prove, as alleged and contended, about the deliberate and malafide investigation with an intent to implicate

the accused falsely. There was nothing on the record to show that there was any animosity between the said Officers and the accused.

14. Once there is sufficient evidence on the record to prove the presence of the accused on the spot at the relevant time, and the role played, the burden lies upon the accused to disprove the case of the prosecution. In the present case, the prosecution has proved the assault by the accused as witnessed by (PW3) Janku and further supported by (PW5) Chandrakant. The presence of these witnesses is also proved. Janku's deposition about the incident remained undisturbed. The injuries, as proved by PW 1, further corroborates the statement of PW3 and PW2 about the three axe blows on the head which resulted into death. PW3, the eye witness cannot be disbelieved as other witnesses and circumstances corroborate the incident, as well as, the death, including the medical evidence. The blood-stained clothes found on the person of the accused is also corroborative evidence which cannot be overlooked. The recovery of the incriminating article, an axe, is also relevant evidence. The nature of the injuries further supports the case of the prosecution. Therefore, the case of the defence of there being a possibility of sustaining the injury due

to a fall is unacceptable.

15. The Chemical Analyzer' sReport at Exhibit-33 and Exhibit-34 reveals that the blood of the accused was analyzed and it was of “A” group. However, Exhibit-34 reveals that the Chemical Analyzer noticed “B” group on the articles 6, 7, 9, 1, 2 & 3. Articles 1 and 2 are the axe, small metal pot, articles 6 & 7 are saree and blouse of the deceased and therein “B” group was noticed. Article 9 is the trouser payjama and on that the Chemical Analyzer has noticed “B” group which was a group different than that of the accused. Therefore, there was no explanation, as recorded by the learned Judge, coupled with the existence of the blood of “B” group on his trouser and payjamas. It is also an additional and strong circumstance against the appellant.

16. The next contention about the delay in lodging the FIR or complaint in no way affects the present case. It is settled that delay, *ipso facto,* is not fatal in each and every case. Even if there is a delay that itself will not, in any case, affect the prosecution's case, if made out, otherwise

by placing on the record proper material and evidence and/or by explaining the said delay. In the present case, there was no delay as such which could fatally affect the prosecution case. The complainant, in the present case, came to know about incident at 7.00 p.m. at Otur, and after visiting the village, spot and dead body, he went to the father of the accused and informed about the offence. Before that, the complainant had collected the information from Chandrakant about the murder. It is brought on the record that there is a distance of 18 kms. between Alphata and Narayangaon. The village Vadgaon-Anand, is at a distance of one to one and half kilometers from Alphata. Considering the incident, complainant must have taken some time to enquire and to console himself and thereafter, he must have got the complaint registered after noticing the dead body and collecting the information. In the present case, therefore, from the time of knowledge i.e. near about 7.00 p.m., as the complaint was recorded at about 9.15 p.m., in our view, this cannot be said to be fatal delay to dislodge the prosecution's case.

16. The punishment is always the result of crime. There are various elements which needs consideration before awarding any punishment.

The Indian Penal Code provides the basic guidelines and quantum for awarding such punishment. There are no mitigating circumstances pointed out to reduce the sentence. The prosecution has proved its case. In view of this, the punishment as awarded is within the framework of law and needs no interference.

18. In the present case, the appellant has intentionally, recklessly, knowing the consequences, hit three blows on the head of the deceased. The existence of the above elements are sufficient in the present case to maintain the order of conviction and punishment.

19. In view of this, we dismiss the Appeal and confirm the sentence, as awarded.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]